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BROOKS KUSHMAN P.C./PGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			OUELLETTE, JONATHAN P	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM T. ROWSE, BARRY M. INMAN,
DEBRA L. MAYBERRY, DAVID GARY PARK,
HENRY THOMAS UBIK, PAUL W. MASHNI,
and ROBERT P. JACKSON

Appeal 2010-005057
Application 09/683,885
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN,
and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1, 3 to 7, and 9 to 16. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

BACKGROUND

Appellants' invention is directed to a method and system for transmitting digital media between remote locations (Specification 1).

Claim 1 is illustrative:

1. A method for transmitting digital media between remote computers via a communication network, the method comprising:

capturing at least one digital image of an item with a digital camera device;

capturing a barcode with a barcode scanning device wherein the barcode identifies the item;

automatically downloading the captured digital image(s) and the scanned barcode into a first computer upon establishing operable communication between the first computer and the digital camera device and the barcode scanning device, respectively;

inputting a first dialog associated with the digital image(s) and barcode into the first computer; and

transmitting the at least one digital image, barcode and first dialog from the first computer to a second computer via a communication network.

The Examiner relies on the following prior art reference as evidence of unpatentability:

Bunte	US 6,330,975 B1	Dec. 18, 2001
Chainer	US 6,397,334 B1	May 28, 2002

Archive of www.xactware.com,
http://wayback.archive.org/web/*/<http://www.xactware.com> (last visited Aug. 10, 2011) [hereinafter Xactware].

Appellants appeal the following rejection(s):

Claims 1, 3 to 5, 7, and 9 to 14 under 35 U.S.C. § 103(a) as unpatentable over Bunte in view of Xactware.

Claim 6 under 35 U.S.C. § 103(a) as unpatentable over Bunte in view of Chainer.

Claims 15 and 16 under 35 U.S.C. § 103(a) as unpatentable over Bunte in view of Chainer and further in view of Xactware.

ISSUES

Did the Examiner err in rejecting the claims because Xactware is not prior art?

Did the Examiner err in rejecting the claims because the Examiner has not provided evidence that the Chat Technology had the capability of being combined with camera and barcode scanning technology?

Did the Examiner err in rejecting claims 4, 5, and 10 to 14 because the Examiner did not include citations to Bunte and Xactware?

FACTUAL FINDINGS

We adopt the Examiner's findings as our own. Ans. 5 to 8.

ANALYSIS

Obviousness rejections of claims 1, 3 to 7, and 9 to 14

We are not persuaded of error on the part of the Examiner by Appellants' argument that Xactware is not prior art. Appellants argue that

the Examiner has made no showing that the Xactware reference was publically disseminated or publically accessible prior to Appellants' date of invention. Appellants also argue that the Web Archive's database was not publically available until October 2001.

Xactware appears to consist of archived copies of pages from a "xactware.com" website, retrieved from the internet archive Wayback Machine. Based on the Uniform Resource Locator (URL) content at the bottom of each page, pages 1 through 15, as numbered by the Examiner, appear to represent web pages that were published (publicly available) on the "xactware.com" site in the year 1998.

In the context of demonstrating *prima facie* unpatentability, we note that the rules of evidence are somewhat relaxed in the instant *ex parte* proceedings. For example, hearsay statements in a document that is not "prior art" may be relied upon to establish facts necessary to support a rejection in *ex parte* examination. *See In re Epstein*, 32 F.3d 1559, 1567 (Fed. Cir. 1994) (court assumed the truthfulness of various assertions in abstracts that were not "prior art" publications as to appellant, because the assertions appeared on their face to be accurate and reliable, and because appellant failed to proffer any evidence to support arguments to the contrary).

In the instant case, Appellants have not provided any evidence to show that the website from which Xactware was retrieved is not reliable as to presumed dates of publication. Nor have Appellants provided any other evidence tending to show that the content described by Xactware was not publicly available on the presumed dates.

In regard to Appellants' argument that the web archive database was not publicly available until October, 2001, we note that it is the date of the Xactware website that is relevant, not the date that the archive database, the Wayback Machine, became available. We agree with the Examiner that the Wayback Machine is an archive tool that has nothing to do with the content provided and used as prior art.

On this record, we conclude that the Examiner properly considered Xactware to represent prior art with respect to the invention of the rejected claims.

We are not persuaded of error on the part of the Examiner by Appellants' argument that the Examiner has provided no evidence that Chat Technology had the capability of being combined with camera and barcode scanning technology for communicating automatically downloaded images, barcodes and dialog and them transmitting these diverse types of information across a network. This argument is in response to the Examiner's reasoning that even though Bunte does not disclose the inputting and transmitting of dialog, Chat Technology, or direct network dialog technology was well known at the time of the invention. Even if Appellants are correct that Chat Technology did not have the capability of being combined with camera and barcode scanning technology at the time of the invention, this is not persuasive of error on the part of the Examiner. The claim language does not require that dialog and camera and barcode scanning technology be combined for communicating automatically downloaded images, barcodes and dialog and transmitting these types of information across a network. All that is required by the language of claim 1

is that the digital image, barcode, and dialog be transmitted, not that they be combined and then transmitted.

In view of the foregoing, we will sustain the Examiner's rejection of claim 1. We will also sustain the rejection as it is directed to claims 3, 6, 7, and 9 because Appellants have not argued the separate patentability of these claims.

We are not persuaded of error on the part of the Examiner by Appellants' argument that the Examiner erred in rejecting claims 4, 5, and 10 to 14 because the Examiner did not include specific citations to Bunte and Xactware. The Examiner included the citations to the references at page 7 of the Answer. As such, Appellants have been notified about the specific portions of these references relied on by the Examiner. We note that Appellants have not commented on the citations in the Reply Brief. As such, we will also sustain the rejection as it is directed to claims 4, 5, and 10 to 14.

Obviousness rejection of claims 15 and 16

Appellants also make a statement that the cited prior art does not teach or fairly suggest the subject matter of claims 15 and 16 followed by a restatement of the subject matter of claim 15. Nothing more is said. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. 37 C.F.R. § 41.37(c)(1)(vii). A general allegation that the art does not teach any of the claim limitations is no more than merely pointing out the claim limitations. *See Voda v. Cordis Corp.*, 536 F.3d 1311, 1324 (Fed. Cir. 2008).

In view of the foregoing, we will also sustain the Examiner's rejection of claims 15 and 16.

DECISION

The decision of the Examiner is affirmed.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1) (2009).

ORDER
AFFIRMED

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